

AMENDED IN ASSEMBLY MARCH 15, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 303**

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**Introduced by Assembly Member Spitzer**  
**(Coauthors: Assembly Members Berryhill, Maze, Parra, Sharon**  
**Runner, and Silva)**

February 9, 2007

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An act to amend ~~Section 191.5~~ *Sections 191.5, 667.1, 667.5, and 1170.125* of the Penal Code, relating to manslaughter.

LEGISLATIVE COUNSEL'S DIGEST

AB 303, as amended, Spitzer. Manslaughter: vehicular.

Existing law punishes ~~gross vehicular manslaughter while intoxicated without gross negligence~~ by imprisonment in the county jail for not more than one year or in the state prison for a term of 4, 6, or 10 years 16 months, 2, or 4 years.

This bill would ~~increase the term of imprisonment to 7 years to life in the state prison~~, instead, punish vehicular manslaughter while intoxicated without gross negligence only by imprisonment in the state prison for 16 months, 2, or 4 years.

Existing law, as amended by Proposition 83 of the November 7, 2006, statewide general election, lists specified felonies as violent felonies. Existing law also lists specified felonies as serious felonies, including gross vehicular manslaughter while intoxicated.

This bill would include gross vehicular manslaughter while intoxicated within the list of violent felonies and would make conforming changes to relevant technical provisions.

*Proposition 83 permits the Legislature, by a vote of  $\frac{2}{3}$  of the membership of each house and in accordance with specified procedures, to amend the provisions of the act.*

*This bill would therefore require a  $\frac{2}{3}$  vote.*

*Because this bill would increase the duties of local officials, it would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: ~~majority~~ <sup>$\frac{2}{3}$</sup> . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known and may be cited as The
- 2 Steve Ambriz Legislation.
- 3 SEC. 2. Section 191.5 of the Penal Code is amended to read:
- 4 191.5. (a) Gross vehicular manslaughter while intoxicated is
- 5 the unlawful killing of a human being without malice aforethought,
- 6 in the driving of a vehicle, where the driving was in violation of
- 7 Section 23140, 23152, or 23153 of the Vehicle Code, and the
- 8 killing was either the proximate result of the commission of an
- 9 unlawful act, not amounting to a felony, and with gross negligence,
- 10 or the proximate result of the commission of a lawful act that might
- 11 produce death, in an unlawful manner, and with gross negligence.
- 12 (b) Vehicular manslaughter while intoxicated is the unlawful
- 13 killing of a human being without malice aforethought, in the
- 14 driving of a vehicle, where the driving was in violation of Section
- 15 23140, 23152, or 23153 of the Vehicle Code, and the killing was
- 16 either the proximate result of the commission of an unlawful act,
- 17 not amounting to a felony, but without gross negligence, or the
- 18 proximate result of the commission of a lawful act that might
- 19 produce death, in an unlawful manner, but without gross
- 20 negligence.
- 21 (c) (1) Except as provided in subdivision (d), gross vehicular
- 22 manslaughter while intoxicated in violation of subdivision (a) is

1 punishable by imprisonment in the state prison for ~~a term of 7~~  
2 ~~years to life~~ 4, 6, or 10 years.

3 (2) Vehicular manslaughter while intoxicated in violation of  
4 subdivision (b) is punishable by imprisonment ~~in a county jail for~~  
5 ~~not more than one year or by imprisonment~~ in the state prison for  
6 16 months or 2 or 4 years.

7 (d) A person convicted of violating subdivision (a) who has one  
8 or more prior convictions of this section or of paragraph (1) of  
9 subdivision (c) of Section 192, subdivision (a) or (b) of Section  
10 192.5 of this code, or of violating Section 23152 punishable under  
11 Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or  
12 convicted of Section 23153 of, the Vehicle Code, shall be punished  
13 by imprisonment in the state prison for a term of 15 years to life.  
14 Article 2.5 (commencing with Section 2930) of Chapter 7 of Title  
15 1 of Part 3 shall apply to reduce the term imposed pursuant to this  
16 subdivision.

17 (e) This section shall not be construed as prohibiting or  
18 precluding a charge of murder under Section 188 upon facts  
19 exhibiting wantonness and a conscious disregard for life to support  
20 a finding of implied malice, or upon facts showing malice  
21 consistent with the holding of the California Supreme Court in  
22 *People v. Watson*, 30 Cal. 3d 290.

23 (f) This section shall not be construed as making any homicide  
24 in the driving of a vehicle or the operation of a vessel punishable  
25 which is not a proximate result of the commission of an unlawful  
26 act, not amounting to felony, or of the commission of a lawful act  
27 which might produce death, in an unlawful manner.

28 (g) For the penalties in subdivision (d) to apply, the existence  
29 of any fact required under subdivision (d) shall be alleged in the  
30 information or indictment and either admitted by the defendant in  
31 open court or found to be true by the trier of fact.

32 *SEC. 2. Section 667.1 of the Penal Code is amended to read:*

33 667.1. Notwithstanding subdivision (h) of Section 667, for all  
34 offenses committed on or after the effective date of this act, all  
35 references to existing statutes in subdivisions (c) to (g), inclusive,  
36 of Section 667, are to those statutes as they existed on the effective  
37 date of this act, including amendments made to those statutes by  
38 ~~the any act enacted prior to or during the 2005-06 2007-08~~  
39 Regular Session that amended this section.

40 *SEC. 3. Section 667.5 of the Penal Code is amended to read:*

1     667.5. Enhancement of prison terms for new offenses because  
2 of prior prison terms shall be imposed as follows:

3     (a) Where one of the new offenses is one of the violent felonies  
4 specified in subdivision (c), in addition to and consecutive to any  
5 other prison terms therefor, the court shall impose a three-year  
6 term for each prior separate prison term served by the defendant  
7 where the prior offense was one of the violent felonies specified  
8 in subdivision (c). However, no additional term shall be imposed  
9 under this subdivision for any prison term served prior to a period  
10 of 10 years in which the defendant remained free of both prison  
11 custody and the commission of an offense which results in a felony  
12 conviction.

13     (b) Except where subdivision (a) applies, where the new offense  
14 is any felony for which a prison sentence is imposed, in addition  
15 and consecutive to any other prison terms therefor, the court shall  
16 impose a one-year term for each prior separate prison term served  
17 for any felony; provided that no additional term shall be imposed  
18 under this subdivision for any prison term served prior to a period  
19 of five years in which the defendant remained free of both prison  
20 custody and the commission of an offense which results in a felony  
21 conviction.

22     (c) For the purpose of this section, “violent felony” shall mean  
23 any of the following:

24         (1) Murder or voluntary manslaughter.

25         (2) Mayhem.

26         (3) Rape as defined in paragraph (2) or (6) of subdivision (a)  
27 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section  
28 262.

29         (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

30         (5) Oral copulation as defined in subdivision (c) or (d) of Section  
31 288a.

32         (6) Lewd or lascivious act as defined in subdivision (a) or (b)  
33 of Section 288.

34         (7) Any felony punishable by death or imprisonment in the state  
35 prison for life.

36         (8) Any felony in which the defendant inflicts great bodily injury  
37 on any person other than an accomplice which has been charged  
38 and proved as provided for in Section 12022.7, 12022.8, or 12022.9  
39 on or after July 1, 1977, or as specified prior to July 1, 1977, in  
40 Sections 213, 264, and 461, or any felony in which the defendant

1 uses a firearm which use has been charged and proved as provided  
2 in subdivision (a) of Section 12022.3, or Section 12022.5 or  
3 12022.55.

4 (9) Any robbery.

5 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

6 (11) Sexual penetration as defined in subdivision (a) or (j) of  
7 Section 289.

8 (12) Attempted murder.

9 (13) A violation of Section 12308, 12309, or 12310.

10 (14) Kidnapping.

11 (15) Assault with the intent to commit a specified felony, in  
12 violation of Section 220.

13 (16) Continuous sexual abuse of a child, in violation of Section  
14 288.5.

15 (17) Carjacking, as defined in subdivision (a) of Section 215.

16 (18) Rape, spousal rape, or sexual penetration, in concert, in  
17 violation of Section 264.1.

18 (19) Extortion, as defined in Section 518, which would constitute  
19 a felony violation of Section 186.22 of the Penal Code.

20 (20) Threats to victims or witnesses, as defined in Section 136.1,  
21 which would constitute a felony violation of Section 186.22 of the  
22 Penal Code.

23 (21) Any burglary of the first degree, as defined in subdivision  
24 (a) of Section 460, wherein it is charged and proved that another  
25 person, other than an accomplice, was present in the residence  
26 during the commission of the burglary.

27 (22) Any violation of Section 12022.53.

28 (23) A violation of subdivision (b) or (c) of Section 11418. The  
29 Legislature finds and declares that these specified crimes merit  
30 special consideration when imposing a sentence to display society's  
31 condemnation for these extraordinary crimes of violence against  
32 the person.

33 (24) *A violation of subdivision (a) of Section 191.5.*

34 (d) For the purposes of this section, the defendant shall be  
35 deemed to remain in prison custody for an offense until the official  
36 discharge from custody or until release on parole, whichever first  
37 occurs, including any time during which the defendant remains  
38 subject to reimprisonment for escape from custody or is  
39 reimprisoned on revocation of parole. The additional penalties  
40 provided for prior prison terms shall not be imposed unless they

1 are charged and admitted or found true in the action for the new  
2 offense.

3 (e) The additional penalties provided for prior prison terms shall  
4 not be imposed for any felony for which the defendant did not  
5 serve a prior separate term in state prison.

6 (f) A prior conviction of a felony shall include a conviction in  
7 another jurisdiction for an offense which, if committed in  
8 California, is punishable by imprisonment in the state prison if the  
9 defendant served one year or more in prison for the offense in the  
10 other jurisdiction. A prior conviction of a particular felony shall  
11 include a conviction in another jurisdiction for an offense which  
12 includes all of the elements of the particular felony as defined  
13 under California law if the defendant served one year or more in  
14 prison for the offense in the other jurisdiction.

15 (g) A prior separate prison term for the purposes of this section  
16 shall mean a continuous completed period of prison incarceration  
17 imposed for the particular offense alone or in combination with  
18 concurrent or consecutive sentences for other crimes, including  
19 any reimprisonment on revocation of parole which is not  
20 accompanied by a new commitment to prison, and including any  
21 reimprisonment after an escape from incarceration.

22 (h) Serving a prison term includes any confinement time in any  
23 state prison or federal penal institution as punishment for  
24 commission of an offense, including confinement in a hospital or  
25 other institution or facility credited as service of prison time in the  
26 jurisdiction of the confinement.

27 (i) For the purposes of this section, a commitment to the State  
28 Department of Mental Health as a mentally disordered sex offender  
29 following a conviction of a felony, which commitment exceeds  
30 one year in duration, shall be deemed a prior prison term.

31 (j) For the purposes of this section, when a person subject to  
32 the custody, control, and discipline of the Director of Corrections  
33 is incarcerated at a facility operated by the Department of the Youth  
34 Authority, that incarceration shall be deemed to be a term served  
35 in state prison.

36 (k) Notwithstanding subdivisions (d) and (g) or any other  
37 provision of law, where one of the new offenses is committed  
38 while the defendant is temporarily removed from prison pursuant  
39 to Section 2690 or while the defendant is transferred to a  
40 community facility pursuant to Section 3416, 6253, or 6263, or

1 while the defendant is on furlough pursuant to Section 6254, the  
2 defendant shall be subject to the full enhancements provided for  
3 in this section.

4 This subdivision shall not apply when a full, separate, and  
5 consecutive term is imposed pursuant to any other provision of  
6 law.

7 *SEC. 4. Section 1170.125 of the Penal Code is amended to*  
8 *read:*

9 1170.125. Notwithstanding Section 2 of Proposition 184, as  
10 adopted at the November 8, 1994, general election, for all offenses  
11 committed on or after the effective date of this act, all references  
12 to existing statutes in Section 1170.12 are to those statutes as they  
13 existed on the effective date of this act, including amendments  
14 made to those statutes by ~~the~~ any act enacted prior to and during  
15 the ~~2005–06~~ 2007–08 Regular Session that amended this section.

16 *SEC. 5. No reimbursement is required by this act pursuant to*  
17 *Section 6 of Article XIII B of the California Constitution because*  
18 *the only costs that may be incurred by a local agency or school*  
19 *district will be incurred because this act creates a new crime or*  
20 *infraction, eliminates a crime or infraction, or changes the penalty*  
21 *for a crime or infraction, within the meaning of Section 17556 of*  
22 *the Government Code, or changes the definition of a crime within*  
23 *the meaning of Section 6 of Article XIII B of the California*  
24 *Constitution.*